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DEPARTMENT OF TRANSPORTATION

Office of the Assistant Secretary for Research and Technology

[Docket Number: OST-2014-0112]

Agency Information Collection Activity; Response to Comments on Notice of Request for Approval to Collect New Information: Voluntary Near Miss Reporting in Oil and Gas Operations on the Outer Continental Shelf

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST-R), U.S. Department of Transportation.

ACTION: Notice; Response to Comments

SUMMARY: On July 2, 2014, the Bureau of Transportation Statistics (BTS) announced its intention in a Federal Register Notice (79 FR 37837) to request that the Office of Management and Budget (OMB) approve the following information collection: Voluntary Near Miss Reporting in Oil and Gas Operations on the Outer Continental Shelf (OCS). At that time, BTS also encouraged interested parties to submit comments to docket number DOT-OST-2014-0112, allowing for a 60-day comment period. The comment period closed on September 2, 2014. BTS received three public comments from: LLOG Exploration (DOT-OST-2014-0112-0004), the American Petroleum Institute (API) and the Center for Offshore Safety (COS) (DOT-OST-2014-0112-0003), and the Offshore Operators Committee (OOC) (DOT-OST-2014-0112-0002). The purpose of this Notice is to respond to the comments received on the July 2, 2014 announcement and allow 30 days for public comment to OMB on this collection from all interested individuals and organizations.

DATES: Written comments should be submitted by (insert date, *30 days after publication*).

ADDRESSES: BTS seeks public comments on its proposed information collection. Comments should address whether the information will have practical utility; the accuracy of the estimated burden hours of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW, Washington, DC 20503, Attention: BTS Desk Officer.

FOR FURTHER INFORMATION CONTACT: Demetra V. Collia, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation, RTS-31, E36-302, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001; Phone No. (202) 366-1610; Fax No. (202) 366-3383; e-mail: demetra.collia@dot.gov. Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

Data Confidentiality Provisions: The confidentiality of near miss data is protected under the BTS confidentiality statute (49 U.S.C. 6307) and the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2002 (Pub. L. 107-347, Title V). In accordance with these confidentiality statutes, only statistical and non-identifying data will be made publicly available through reports. BTS will not release to the Bureau of Safety and Environmental Enforcement (BSEE), or to any other public or private entity, any information that might reveal the identity of individuals or organizations mentioned in near miss reports without explicit consent of the respondent.

SUPPLEMENTARY INFORMATION:

I. The Data Collection

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; as amended) and

5 CFR part 1320 require each Federal agency to obtain OMB approval to initiate an information collection activity. BTS is seeking OMB approval for the following BTS information collection activity:

Title: Voluntary Confidential Near Miss Reporting in Oil and Gas Operations on the Outer Continental Shelf

OMB Control Number: TBD.

Type of Review: Approval of data collection.

Respondents: Employees working in the oil and gas industry on the OCS.

Number of Potential Responses: Based on near miss reporting trends in other industries, BTS expects to receive no more than two responses per calendar day during the first three years of the program (approximately 730 responses per year).

Estimated Time per Response: Not to exceed 60 minutes (this includes estimated time for a follow up interview, if needed.)

Frequency: Intermittent for 3years. (Reports are submitted when there is a qualifying event, *i.e.*, when a near miss occurs in oil and gas operations on the OCS.)

Total Annual Burden: 730 hours.

II. Public Participation and Request for Public Comments

On July 2, 2014, BTS published a notice (70 FR 37837) encouraging interested parties to submit comments to docket number DOT-OST-2014-0112 and allowing for a 60-day comment period. The comment period closed on September 2, 2014. To view comments, go to <http://www.regulations.gov> and insert the docket number, "DOT-OST-2014-0112" in the "Search" box and click "Search." Next, click "Open Docket Folder" button and choose document listed to review. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Privacy Act

All comments the BTS received were posted without change to <http://www.regulations.gov>. Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if

submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

III. Discussion of Public Comments and BTS Responses

A. General Discussion

BTS announced on July 2, 2014, in a Federal Register Notice (79 FR 37837), its intention to request that OMB approve the following information collection: Voluntary Near Miss Reporting in Oil and Gas Operations on the OCS. BTS received three comments during the 60-day public comment period. Comments from LLOG Exploration, API/COS, and the OOC covered various topics including the definition of a near miss reporting (*i.e.*, the reporting of conditions, root cause analysis, duplicative reporting, information-sharing, the scope of reporting, and the potential for reporting to multiple systems), the estimated number of burden hours, notification of near misses at their respective facilities, evaluation of the program, and the intent of the 2011 report by the National Commission on the Deepwater Horizon Oil Spill (the National Commission Report).

B. Definition of a Near Miss

All three of the commenters had questions about the description of a near miss used by BTS in the July 2, 2014 notice. BTS appreciates the commenters' concerns. BTS intends the term "near miss" to encompass a variety of safety conditions, since a narrow operational definition of the term may unduly inhibit reporting of events or conditions that, regardless of potential severity, would limit the program's effectiveness in preventing and minimizing safety risks. In addition, the BTS' description of the term is consistent with the International Maritime Organization's (IMO) definition of a "near miss" and is therefore widely recognized around the world."

C. Reporting

1. Reporting of Conditions

Two of the three commenters were concerned that any hazard could be deemed a "condition" and be reported as a near miss. BTS's experience with the railroad and aviation industry close call/near miss reporting programs indicates that the reporting of "conditions" may be very valuable to causal analysis of potential safety risks and the prevention of safety incidents. By learning more about potentially unsafe conditions, the public, government, and industry will

be better able to identify hazards, hazardous conditions, and potential design and operational improvements that could reduce risks on the OCS.

2. Root Cause Analysis

All three of the commenters sought additional information on whether and how BTS would conduct root cause analyses of near miss reports. In addition, one commenter had questions about the background and experience of those individuals that would review and analyze the near miss reports. BTS agrees that causal analysis of near miss information reported under this program will be very important and should be conducted by experienced personnel. For this program, BTS intends to employ subject matter experts (SMEs) in oil and gas operations and trained in investigative techniques to conduct follow-up interviews with individuals who report near misses. Further, SMEs, using well-established causal analysis tools similar to those widely used by industry and research organizations, will collect additional information about potential contributing factors to reported near misses and unsafe conditions as well as help conduct causal analyses of reported near misses.

3. Duplicative Reporting

Two of the three commenters expressed concern about how multiple reports for the same near miss event would be handled. BTS has experience, through its other reporting programs, with identifying duplicate reports for the same event; *e.g.*, through comparing event location, event description, event time, and other factors. In addition, assessment and follow-up of near miss reports by experienced SMEs acting on behalf of BTS will help identify duplicative reports. However, occasional multiple reports to BTS of a single near miss event by more than one source is not necessarily a problem. Reports on the same event from different sources can provide different and useful perspectives, and thus may help BTS obtain a more complete picture of the event.

4. Information-sharing

One of the three commenters expressed some concern over how long it might take for a hazard to go uncorrected if it is only reported through this reporting system; the commenter indicated that such reports should be made directly to the facility or company involved so that the hazard can be promptly corrected. If BTS receives a near miss report indicating a significant hazard or condition exists that poses an imminent risk, BTS will take action, consistent with CIPSEA, to share that information with an affected facility or facilities, or with the industry as a

whole, as quickly as possible. Under CIPSEA, BTS may disclose such reported information, as appropriate, if the reporter consents to BTS doing so and in cases of potentially imminent risks, BTS would seek such consent expeditiously. In addition, assuming a reporter does not consent to share information from an individual report, BTS may be able to aggregate data in a way that protects the anonymity of the reporter and the confidentiality of the specific report and share information about the potential risks in near real time.

5. Scope of Reporting

All three commenters had questions about the scope of reporting near misses by individuals to the Voluntary Near Miss Reporting System and advocated that near miss information should be reported by OCS companies or industry associations. BTS recognizes the potential value of the near miss reporting systems operated by individual companies and other entities. The near misses reported to company or other industry systems undoubtedly provide important safety information to the individual companies and could provide valuable information to the industry, government, and public, if shared. BTS looks forward to discussing with industry groups and companies their potential participation in a near miss reporting system.

However, BTS does not agree that an offshore oil and gas near miss reporting system should be limited to participation by companies or other industry organizations that collect near-miss information. This Voluntary Near Miss Reporting System provides strict protection, under CIPSEA, of the reporters' identities and of the confidentiality of the information, which is typically not afforded by company or other industry organization reporting systems. Thus, this system will afford individuals – including company and contractor employees – an opportunity to report near misses that they otherwise might not feel safe to report to their employers. Accordingly, this near miss reporting system could, through BTS' aggregate reports, provide information to industry, the workforce, the government, and the public about potential hazards and unsafe conditions that would not be reported (or shared) under company or other industry programs.

Moreover, if participation in this voluntary program were limited to companies, or other industry organizations, the information provided to BTS would be circumscribed by whatever definitions or other limitations each company or entity places on its reporting programs. For example, as indicated by some of the commenters, existing industry programs appear to focus on high impact or high potential events, to the exclusion of lower potential events or conditions. By

contrast, this near miss reporting system extends to what industry might consider “low severity” near misses that could, depending upon other factors, indicate the potential for more severe events to occur or demonstrate a lack of safety culture or awareness about specific hazards with industry-wide implications.

Similarly, if this voluntary near miss reporting system were restricted to participation only by companies or other industry entities, the information submitted to BTS would also be subject to whatever limits the specific company or entity places on the information it chooses to share. For example, the company or entity might decide to submit only information that it considered “legitimate” or significant, instead of providing the initial or “raw” information that the company/entity had received. BTS believes there is potential value to be gained from near miss information that companies/entities may think is of low severity or importance or of uncertain validity, but that reflects the individual reporters’ unique perspectives on the event or condition.

In addition, BTS disagrees with the suggestion made by two commenters that individuals should not be allowed to participate in this system because they would not understand ‘contributing factors’ or root causes. That concern is academic since individual reporters would not participate in the causal analysis process; BTS, with help from appropriately qualified SMEs, would perform causal analyses.

Finally, based on its experience with other industry reporting programs, BTS does not agree with the comment made by two commenters suggesting that BTS limit participation in the program to companies/entities in order to reduce the estimated time for responses. For the reasons stated elsewhere in this notice, BTS believes there will be substantial potential benefits from individual reporting and that, even assuming a company could submit reports in less time than an individual, the suggested efficiency of company reporting does not warrant precluding individuals from filing reports offering their own perspectives on the same events. Moreover, as discussed previously, if reporting were limited only to companies, BTS likely would not receive reports on all of the near-misses that could be reported by individuals.

In addition, BTS does not agree with the two commenters who asserted that the estimated time (60 minutes) for individual responses is excessive. The estimated time needed to complete an initial report is approximately 15 minutes, which is short enough to encourage widespread participation. The remainder of the estimated 60 minutes would be used for a confidential

follow-up interview, as warranted by the initial report. It is important to point out that follow-up interviews are voluntary and not every respondent will consent to be interviewed. Although, a respondent who feels it is worthwhile to voluntarily submit an initial report is likely to be willing to participate in a confidential interview in order to ensure that the reported information is clearly understood and correctly evaluated by BTS.

6. Potential for Reporting to Multiple Systems

Two commenters asserted that this near miss reporting system may create redundant reporting with other private and governmental reporting programs or near miss initiatives. In particular, the commenters suggested that individuals may submit reports under BSEE's regulation allowing voluntary reporting of hazardous or unsafe working conditions on OCS facilities (30 CFR 250.193). BTS disagrees with these comments. The BTS Voluntary Near Miss Reporting System is strictly voluntary and is not intended to replace or interfere with industry, BSEE, or other agency reporting programs, whether voluntary or mandatory. Instead, the BTS Voluntary Near Miss Reporting System will provide another opportunity for reporting a wide range of potential hazard and risk information related to OCS oil and gas operations.

As one commenter recognized, in some cases an individual may feel inhibited about reporting a near miss to a company or other industry reporting program and thus may choose to report the event or condition to BTS under the protections afforded by CIPSEA. In such cases, there would be no duplication of reporting.

Similarly, an individual may prefer reporting to CIPSEA under the guarantees of anonymity and confidentiality provided by CIPSEA rather than reporting voluntarily to BSEE under 30 CFR 250.193. Although section 250.193 of BSEE's rules allows an individual to report hazardous or unsafe working conditions anonymously, BSEE is subject to FOIA and cannot guarantee the anonymity or confidentiality of the information to the same degree BTS can protect information collected under CIPSEA. Thus, individuals concerned with protecting their anonymity or with confidentiality may choose to submit near miss information to BTS under CIPSEA rather than to BSEE. Moreover, the types of issues that may be reported under §250.193 (potential violations of BSEE rules and hazardous or unsafe working conditions) are potentially not as inclusive as the issues that may be reported under this near-miss reporting system.

BTS also does not agree with the two commenters who suggested that BTS should not accept reports for near misses that have been reported to industry. The reports submitted to BTS will serve an important purpose even if some of the near misses were also submitted to industry. For example, the aggregated results of BTS analysis of near miss reports will be widely disseminated to government agencies, the industry, and the public. By contrast, information from existing industry near-miss systems, to date, is generally not shared within the industry or with the government and the public. In any event, at present BTS has no way of knowing which specific near misses have been reported to industry, and thus no basis for rejecting individual reports submitted under this near miss reporting system.

API/COS noted in their joint comments, the implementation of the COS Learning from Incidents (LFI) program, which COS believes could inform BTS's Voluntary Near Miss Reporting System but also demonstrates a potential overlap between the two programs. BTS is aware of the potential benefits of the COS LFI program, for COS' members, and looks forward to discussing with COS the potential sharing of that information with BTS, and potential sharing of lessons learned from that information with all stakeholders. However, it is evident that the LFI program is limited in scope to only information from COS member companies regarding specifically-defined incidents and "High Value Learning Events." Moreover, as API/COS also notes in their joint comments, the aggregated information from that program is only shared with COS members. For that reason, BTS does not agree that the proposed near miss reporting system should be delayed pending the outcome of further consideration of the LFI program.

D. Estimated Burden Hours

Two of the three commenters questioned BTS's estimated number of near miss reports that would be submitted. In particular, OOC claimed that the number of potential respondents submitting reports could be up to 4 or 5 times higher than BTS's estimate, "if a reporting compliance level of 10-15% is reached," primarily because the broad scope of "near miss" in this system will result in a large number of reports on "low potential" events. In the absence of actual near miss reporting rates in offshore oil and gas operations, BTS's estimates were based upon BTS' experience with near miss reporting in other industry sectors. This estimate will be revised, as appropriate, once BTS can establish an expected annual reporting rate based on "actual" reporting statistics of near misses collected during the initial phase of this program (*i.e.*, first 3 years).

E. Notification of Near Misses

Two of the three commenters asked that facilities be notified when a near miss has been reported for their installation or unit. BTS, however, cannot notify an owner or operator of a near-miss reported which is reported in confidence without jeopardizing the anonymity of the individual making the report or the confidentiality of the information provided, and thus violating the statutory protections afforded by CIPSEA, unless the reporter consents to sharing that information. Moreover, if the reporter's identity were discovered, it would open the individual up to potential sanctions or retaliation by the company. The National Commission Report which recommended that BSEE develop a near-miss reporting system for OCS oil and gas operations, also specifically recommended that whistleblowers who notify authorities about lapses in safety be provided protection: "All offshore workers have a duty to ensure safe operating practices to prevent accidents. To ensure all workers, regardless of employer, will take appropriate action whenever necessary, Congress should amend the Outer Continental Shelf Lands Act or specific safety statutes to provide the same whistleblower protection that workers are guaranteed in other comparable settings."

F. Program Evaluation

One commenter requested that BTS report the results of the program to stakeholders at least once a year and that the program be evaluated after two years of operation. The frequency of public reports will depend on how many near miss reports are reported to the system. To comply with CIPSEA, reports of aggregated data must be prepared in such a way that no third party could determine the identity of a reporter, directly or indirectly. BTS expects to issue public reports at least once per year and potentially more often, as appropriate.

With regard to re-evaluating the program after two years, as demonstrated by near miss reporting in the aviation industry, it took a commitment of several years before employee reporting increased sufficiently to allow for a robust program evaluation. BTS agrees that "formative evaluation" is essential in developing a successful data collection program and will conduct such evaluation as soon as there is sufficient quantitative information in the near miss data system to allow for such analysis. However, the potential value of sharing data in a confidential manner is worth the investment of time and effort because the continuation of environmental and human losses is an unacceptable alternative to the public and the government.

G. Intent of the National Commission Report

One commenter correctly noted that the National Commission Report on the BP Deepwater Horizon Oil Spill was issued in 2011, not 2013 as the 60-day notice inadvertently stated. BTS, however, does not agree with the commenter's suggestions that the National Commission Report did not envision a government-managed system for near miss reporting, or that the Commission's recommendation for an industry "self-policing institute that would gather incident and performance data" would satisfy the recommendation for a near miss reporting program. In fact, the two recommendations are contained in different parts of the 2011 report, and it was in that part of the report directed to the Department of the Interior (DOI) that the National Commission recommended that DOI: "Develop more detailed requirements for incident reporting and data concerning offshore incidents and 'near misses.' Such data collection would allow for better tracking of incidents and stronger risk assessments and analysis."

Issued on: January 28, 2015

Rolf Schmitt, Deputy Director

Bureau of Transportation Statistics,
Office of the Assistant Secretary for Research and Technology

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